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8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA  
11  
12 SAN FRANCISCO DIVISION

12 NEXTDOOR.COM, INC., a Delaware  
corporation,

13 Plaintiff,

14 vs.

15 RAJ ABHYANKER, an individual,

16 Defendant.

17 RAJ ABHYANKER, an individual

18 Counterclaimant,

19 vs.

20 NEXTDOOR.COM, INC., a Delaware  
corporation; PRAKASH  
21 JANAKIRAMAN, an individual;  
22 BENCHMARK CAPITAL PARTNERS,  
L.P., a Delaware limited partnership;  
23 BENCHMARK CAPITAL  
MANAGEMENT CO. LLC, a Delaware  
24 limited liability company; SANDEEP  
SOOD, an individual; MONSOON  
25 ENTERPRISES, INC., a California  
corporation, and DOES 1–50, inclusive;

26 Counterdefendants.  
27  
28

Case No. 3:12-cv-05667-EMC

**DEFENDANT AND  
COUNTERCLAIMANT RAJ  
ABHYANKER'S OPPOSITION TO  
BENCHMARK CAPITAL PARTNERS, L.P.  
AND BENCHMARK CAPITAL  
MANAGEMENT CO. LLC'S MOTION TO  
DISMISS RAJ ABHYANKER'S SECOND  
AMENDED ANSWER AND  
COUNTERCLAIM**

Date: February 13, 2014  
Time: 1:30 p.m.  
Courtroom: 5 – 17<sup>th</sup> Floor  
Judge: Honorable Edward M. Chen

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	1-2
II.	BACKGROUND .....	2-5
III.	LEGAL STANDARD .....	5-6
IV.	ARGUMENT .....	6-22
A.	BENCHMARK WAS OBLIGATED TO GUARD THE SECRECY OF MR. ABHYANKER'S CONFIDENTIAL INFORMATION .....	6-12
i.	The oral agreement between Benchmark and Mr. Abhyanker could have been performed within one year .....	7-8
i.	Benchmark is estopped from relying on the statute of frauds .....	8-10
ii.	Issues of facts regarding Benchmark's obligations should be resolved at trial .....	10
B.	MR. ABHYANKER PLED THE COMMUNICATION OF ACTIONABLE TRADE SECRETS TO BENCHMARK .....	12-20
i.	Mr. Abhyanker identified his trade secrets with sufficient particularity .....	12-15
ii.	The trade secrets at issue are valid trade secrets, though Mr. Abhyanker is not required to prove his case on the merits at the pleading stage .....	15-20
1.	The identified trade secrets were not publicly known .....	16-18
a.	Mr. Abhyanker took reasonable steps to preserve the secrecy of the his Lorelei Neighborhood trade secret .....	16-17
b.	Mr. Abhyanker took reasonable steps to preserve the secrecy of the his bidding history trade secret .....	17-18
2.	The identified trade secrets have independent economic value .....	18-20
a.	The Lorelei neighborhood trade secret has independent economic value .....	18-19
b.	The bidding history trade secret has independent economic value .....	19-20
C.	MR ABHYANKER SATISFIED THE PLEADING REQUIREMENTS AS SET FORTH IN IQBAL AND TWOMBLY .....	20-22
V.	CONCLUSION .....	23

## TABLE OF AUTHORITIES

### **Cases**

<i>AccuImage Diagnostics Corp v. Terarecon, Inc.</i> , 260 F. Supp. 2d 941 (N.D. Cal. 2003) .....	12
<i>Allergan, Inc. v. Merz Pharmaceuticals, LLC</i> , No. 11-446, 2012 U.S. Dist. LEXIS 31981 (C.D. Cal. Mar. 9, 2012) .....	18-19
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007) .....	2, 5, 12, 20
<i>Broam v. Bogan</i> , 320 F.3d 1023 (9th Cir. 2003) .....	5
<i>Brocade Communications Systems, Inc. v. A10 Networks, Inc.</i> , No. 10-CV-03428, 2011 U.S. Dist. LEXIS 30227 (N.D. Cal. Mar. 23, 2011).....	18, 20
<i>Burroughs Payment Sys. Inc. v. Symco Group, Inc.</i> , No. C-11-06268, 2012 WL 1670163 (N.D. Cal. May 14, 2012) .....	13-15
18, 20	
<i>California Int’l Chemical Co. v. Sister H. Corp.</i> , 1999 U.S. App. LEXIS 868 (9th Cir. Jan. 19, 1999) .....	16
18, 20	
<i>Colon v. Tosetti</i> , 14 Cal. App. 693 (1910) .....	8
18, 20	
<i>DocMagic, Inc. v. Ellie Mae, Inc.</i> , 745 F. Supp. 2d 1119 (N.D. Cal. 2010).....	12, 15
<i>Estate of Housley</i> , 56 Cal. App. 4th 342 (1997) .....	9
<i>Foley v. Interactive Data Corp.</i> , 47 Cal. 3d 654 (1988) .....	7
<i>Gable-Leigh, Inc. v. North American Miss</i> , No. 01-01019, 2001 U.S. Dist. LEXIS 25614 (9th Cir. April 16, 2001) .....	16
<i>GiveMePower Corp. v. Pace Compumetrics, Inc.</i> , No. 07-cv-157, 2007 U.S. Dist. LEXIS 59371 (S.D. Cal. Aug. 14, 2007) .....	13-14
<i>Glacier Water Co., LLC v. Earl</i> , 2010 WL 5071258 WD Wash, Dec. 7, 2010.....	9-10
<i>Hall v. Hall</i> , 222 Cal.App.3d 578, 585–86 (1990).....	9
<i>Hollywood Motion Picture Equipment Co. v. Furer</i> 16 Cal.2d 184, 187, 105 P.2d 299 (1940) .....	7
<i>In re Eastview Estates II</i> , 713 F.2d 443 (9th Cir.1983) .....	9

1	<i>K-2 Ski Co. v. Head Ski Co., Inc.</i> , 506 F.2d 471 (9th Cir. 1974).....	16-17
2	<i>Keller v. Pacific Turf Club</i> 192 Cal.App.2d 189 (1961).....	7
3	<i>King v. Riveland</i> , 125 Wash. 2d 500, 506 (1994) .....	9
4	<i>KnowledgePlex, Inc. v. PlaceBase, Inc.</i> , No. C-08-4267, 2008 U.S. Dist. LEXIS 103915 (N.D.	
5	Cal. Dec. 17, 2008) .....	13, 20
6	<i>MAI Sys. Corp. v. Peak Computer, Inc.</i> , 991 F.2d 511 (9th Cir. 1993).....	6
7	<i>Mar Partners I LLC v. Amer. Home Mort. Servicing, Inc.</i> , No. C 10–02906, 2010 WL 3184334	
8	(Aug. 11, 2010). .....	8
9	<i>Maximo v. San Francisco Unified School District</i> , No. C 10-35533 JL, 2011 U.S. Dist. LEXIS	
10	30225 (N.D. Cal. Mar. 21, 2011) .....	6, 20
11	<i>Monarco v. Lo Greco</i> , 35 Cal. 2d 621 (1950).....	9
12	<i>Parks Sch. of Bus. v. Symington</i> , 51 F.3d 1480 (9th Cir. 1995).....	5, 10
13	<i>Premiere Innovations, Inc. v. Iwas Industries, LLC</i> , No. 07-cv-1083, 2007 U.S. Dist. LEXIS	
14	(S.D. Cal. Sept. 28, 2007) .....	13
15	<i>Pyro Spectaculars North, Inc. v. Souza</i> , 861 F. Supp.2d 1079 (E.D. Cal. 2012) .....	18
16	<i>Religious Tech. Ctr. v. Netcom On-Line Commc’n Servs., Inc.</i> , 923 F. Supp. 1231 (N.D. Cal.	
17	1995) .....	7
18	<i>Rosenthal v. Fonda</i> , 862 F.2d 1398 (9th Cir. 1988) .....	7
19	<i>Siam Numhong Prods. Co., Ltd. v. Eastimpex</i> , 866 F. Supp. 445 (N.D. Cal. 1994).....	6
20	<i>SOAProjects, Inc. v. SCM Microsystems, Inc.</i> , 2010 WL 5069832, No. 10–CV–01773 (N.D. Cal	
21	Oct. 9, 2013).....	9
22	<i>Solis v. Webb</i> , C-12-2055 EMC, 2012 U.S. Dist. LEXIS 138516 (N.D. Cal. Sept. 26, 2012).....	5
23	<i>Speech Technology Associates v. Adaptive Communication Systems, Inc.</i> , 1994 WL 449032, No.	
24	C–88–2392 (Aug. 16, 1994, ND Cal) .....	6
25	<i>StonCorGrp., Inc. v. Campton</i> , No. C05–1225JLR, 2006 WL 314336 (W.D. Wash. Feb. 7, 2006)	
26	.....	12
27	<i>Sweet v. Bridge Base, Inc.</i> , No. CV F 08–1034, 2009 WL 1514443 (E.D. Cal. May 28, 2009) .....	8
28	<i>TMX Funding, Inc. v. Impero Technologies, Inc.</i> , No. C-10-00202, 2010 U.S. Dist. LEXIS 60260	

1	(N.D. Cal. June 17, 2010) .....	13
2	<i>Tostevin v. Douglas</i> , 160 Cal. App. 2d 321 (1958).....	8
3	<i>Trandes Corp. v. Guy F. Atkinson Co.</i> , 996 F.2d 655 (4th Cir. 1993).....	16
4	<i>White Lightning Co. v. Wolfson</i> , 68 Cal. 2d 336 (1968) .....	7
5	<i>Whyte v. Schlage Lock Co.</i> , 125 Cal. Rptr. 2d 277 (2002) .....	6
6	<i>Wolf Designs United States District Court</i> , 322 F.Supp.2d 1065 (C.D. Cal. 2004) .....	6
7	<b>Statutes</b>	
8	Cal. Civ.Code § 3426.1(b) .....	6-7, 12
9	Cal. Civ.Code § 3426.1(d)(2).....	20
10	Rule 12(b)(6).....	5
11	<b>Other Authorities</b>	
12	Dickinson, Boonsri. "So What The Heck Is An Entrepreneur In Residence Anyway?" Business	
13	Insider 15 Mar. 2012 .....	2
14	Martine, Jennifer. " <u>Fanbase Steps Up to the Plate.</u> " <i>Gigaom</i> . 24 Aug 2009. ....	4
15	Milgrim, Trade Secrets, § 2.07 .....	16

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## I. INTRODUCTION

Defendant and counterclaimant Raj Abhyanker hereby opposes the motion to dismiss filed by counterdefendants Benchmark Capital Partners, L.P. and Benchmark Capital Management Co. LLC (collectively “Benchmark”). (D.E. 145 (“Benchmark MTD”)). Benchmark spends much of its motion creating distractions and mischaracterizing facts when the only relevant issue is whether Mr. Abhyanker has sufficiently pled his trade secret misappropriation claims, such that the claims should proceed to discovery. Quite simply, he has.

The Court has already denied motions to dismiss Mr. Abhyanker’s trade secret misappropriation claims brought by Nextdoor.com, Inc. (“Nextdoor.com”), Prakash Janakiraman, and Sandeep Sood. (D.E. 100.) In addition, the Court allowed Mr. Abhyanker leave to file his Second Amended Complaint and Counterclaim (SAAC). The SAAC includes the present trade secret misappropriation claims, which are a subset of the claims that survived the prior motions to dismiss. (*See* D.E. 100.) Accordingly, the claims are properly pled, and Mr. Abhyanker should be permitted to take discovery on them.

Because Mr. Abhyanker’s claims are properly pled, Benchmark attempts to distract the Court with a lengthy recitation of largely irrelevant and mischaracterized facts. Benchmark’s motion then focuses on the argument that it cannot be held to its promise to guard Mr. Abhyanker’s trade secrets because its oral non-disclosure agreement, which it is in the practice of granting to entrepreneurs, cannot be enforced. Benchmark ignores California law, which holds that the statute of frauds is to be used only for the prevention of fraud, and not to perpetrate fraud. A party must be held to its promise, when the promisee has reasonably relied on the representation.

Benchmark next argues that Mr. Abhyanker’s trade secrets are not actionable in that they do not have independent economic value and were already known to the public. That argument is undercut by the fact that Benchmark itself expressed interest in developing Mr. Abhyanker’s concept. If the trade secrets truly had no value, or if they had lost their value through being widely known, Benchmark would not have entered into funding discussions with Mr. Abhyanker. Importantly, however, Mr. Abhyanker is not required to prove the validity of his trade secrets at

1 this stage of the litigation.

2 Finally, Benchmark argues that the SAAC fails to meet the pleading standard as  
3 articulated by the Supreme Court in *Twombly* and *Iqbal*. Benchmark's argument is largely  
4 manufactured from mischaracterized facts, and from a misguided notion of what is required at the  
5 pleading stage. The SAAC identifies the trade secrets, explains the value of them, and explains  
6 the steps that Mr. Abhyanker took in order to maintain secrecy. Nothing further is required at the  
7 pleading stage. In sum, Benchmark's motion is lacking in merit, and Mr. Abhyanker respectfully  
8 requests that his claims be allowed to proceed to the discovery stage.

## 9 **II. BACKGROUND**

10 Nextdoor.com, Benchmark, and the individuals associated with them have a pattern and  
11 practice of building companies based on stolen information and engaging in dishonest business  
12 practices at the expense of entrepreneurs. SAAC ¶ 97. Benchmark is in the minority of venture  
13 capitalists that employ the practice of Entrepreneurs-in-Residence ("EIRs"). SAAC ¶ 98.  
14 Benchmark's EIRs are people who do not have a formulated business concept while they are in  
15 residence, but Benchmark aims to invest in the EIRs if and when they do formulate a business  
16 concept. *Id.* (citing Boonsri Dickinson, So What The Heck Is An Entrepreneur In Residence  
17 Anyway?, Business Insider, Mar. 15, 2012). In the meantime, Benchmark allows the EIRs to  
18 listen in on pitches by outside startups pitching ideas to Benchmark. This highly unethical  
19 practice frequently leads to EIRs stealing ideas from the entrepreneurs who are pitching their  
20 ideas to Benchmark, and then forming companies to pursue such stolen ideas with funding from  
21 Benchmark. *Id.*

22 In or around September 2006, Abhyanker developed the concepts for two private online  
23 neighborhood social networks. The first concept, LegalForce was to be an online private social  
24 network for neighborhood inventors, created by geocoding inventors and owners from public  
25 patent and trademark data. The second concept, Nextdoor.com, was to use the same source code  
26 as LegalForce to create ,a private social network for secure collaboration of neighbors in a  
27 geospatial area. Both the LegalForce and the Nextdoor networking sites were to be used by  
28 neighbors who registered with the site. *Id.* ¶ 100.

1 In connection with his LegalForce and Nextdoor concepts, Abhyanker developed trade  
2 secrets including the trade secrets at issue in the present motion. *Id.* During Abhyanker's  
3 development of the LegalForce and Nextdoor concepts, he also originated a new concept based  
4 on a Wikipedia-like public database of neighbor profiles that could be edited and enhanced to  
5 provide a "search" and "discover" functionality as contrasted with a sign-up social network.  
6 Abhyanker named this new functionality "Fatdoor" *Id.* ¶ 109. However, based on feedback from  
7 users, an internal decision was made to work on an improved version of Fatdoor centered on  
8 security and privacy. Accordingly, Mr. Abhyanker incorporated some of his LegalForce and  
9 Nextdoor trade secrets into Fatdoor, in order to make improvements, and to create a more secure  
10 neighborhood social networking concept. *Id.*

11 As he developed his social networking concepts, Mr. Abhyanker began to approach  
12 various sources, including venture capital firms, in order to fund the further development of his  
13 ideas. Being ignorant of Benchmark's history of misappropriating intellectual property, Mr.  
14 Abhyanker approached Benchmark to discuss funding for his projects. On or around June 20,  
15 2007, an initial meeting was set with Benchmark to discuss funding for Fatdoor. *Id.* ¶ 121. The  
16 initial meeting with Benchmark did not involve the disclosure of any nonconfidential, trade secret  
17 information. Instead, at that meeting it was discussed that a confidential meeting would take  
18 place only after assurances were received that all information shared by Mr. Abhyanker would be  
19 maintained strictly confidential. *Id.*

20 In keeping with its pattern and practice of verbal agreements and handshakes, Benchmark  
21 provided oral assurances to Mr. Abhyanker that it would keep his materials confidential. *Id.*  
22 Based on those assurances, Mr. Abhyanker shared his confidential information, including the  
23 trade secrets at issue here. *Id.* ¶¶ 121-123. At least three of the co-founders of plaintiff and  
24 counterdefendant Nextdoor.com were EIRs in formal and informal capacities when Mr.  
25 Abhyanker pitched his ideas to Benchmark. *Id.* ¶ 98.

26 After reviewing Mr. Abhyanker's confidential information, Benchmark clearly recognized  
27 the value in Mr. Abhyanker's concepts as it expressed interest in funding the development of Mr.  
28 Abhyanker's concepts. *Id.* ¶¶ 124-125. However, another venture capital firm, Norwest Venture



1 Partners, provided a higher valuation of Fatdoor. *See* Declaration of Raj Abhyanker ISO Opp. to  
2 Nextdoor's Mot. for Summary Judgment (filed concurrently herewith), ¶¶ 80-82. Accordingly,  
3 the Fatdoor founders decided to accept funding from Norwest. Benchmark was only interested in  
4 being a primary investory, not a secondary investor. Accordingly, the talks between Mr.  
5 Abhyanker, Fatdoor and Benchmark ended. *Id.* Had Benchmark truly thought that Mr.  
6 Abhyanker's trade secrets lacked intrinsic economic value, or lacked value for having been  
7 widely disseminated to the public, Benchmark would not have considered investing in the  
8 development of those ideas. To the contrary, Benchmark did recognize the value in Mr.  
9 Abhyanker's ideas, but failed to meet Norwest's terms.

10 One company that Benchmark did fund, however, began floundering after Benchmark had  
11 received Mr. Abhyanker's valuable trade secrets. That company, Fanbase Inc was founded by  
12 Nirav Tolia, an EIR who was in residence at Benchmark when Mr. Abhyanker pitched his  
13 concepts. *Id.* ¶¶ 99, 143, 183. Fanbase Inc. evolved from the failed SPN, Inc. and Rount Two,  
14 Inc. concepts. *Id.* After receiving \$5 million in funding from Benchmark in 2009, Fanbase  
15 launched a sports-related website. *See, e.g.,* Jennifer Martine, Fanbase Steps Up to the Plate,  
16 Gigaom, Aug. 24, 2009, available at: [http://gigaom.com/2009/08/24/with-funding-from-](http://gigaom.com/2009/08/24/with-funding-from-benchmark-fanbase-steps-up-to-the-plate/)  
17 [benchmark-fanbase-steps-up-to-the-plate/](http://gigaom.com/2009/08/24/with-funding-from-benchmark-fanbase-steps-up-to-the-plate/) ("The company has received \$5 million in funding  
18 from Benchmark Capital, the original investor in Epinions, a startup co-founded by Fanbase CEO  
19 Nirav Tolia that was shrouded in controversy and legal battles and ultimately acquired by  
20 eBay."). By 2010 it became clear that the Fanbase concept was also a failure, and Nirav Tolia  
21 and others within Fanbase were scrambling for a new concept in order to salvage Benchmark's  
22 investment. *See* SAAC ¶ 99. By March 2011, Fanbase had reinvented itself as Nextdoor.com,  
23 and finally launched a successful venture, built on concepts that Benchmark already knew to be  
24 valuable. *Id.* ¶ 150.

25 In 2011, following the revalation that Benchmark had disclosed Mr. Abhyanker's trade  
26 secrets, Mr. Abhyanker filed suit against Nextdoor.com in state court. Case No. 1-11-CV-  
27 212924. That action has no bearing on the present proceeding, given that none of the claims at  
28 issue in the state court action were decided on their merits. Instead of pursuing the state court

1 action, Mr. Abhyanker chose to dismiss his state court action without prejudice on February 8,  
2 2012. By dismissing the state court action, Abhyanker's resources were freed and directed  
3 towards litigating the TTAB oppositions, which he did with some success. SAAC ¶ 156. In or  
4 about September 15, 2012, Nextdoor.com's motions to dismiss the TTAB oppositions were  
5 defeated and formal discovery was to commence before TTAB to determine whether the  
6 Nextdoor.com should be denied federal trademark rights because of fraud on the United States  
7 Trademark Office. SAAC ¶ 156. However, on November 5, 2012, Nextdoor filed the instant  
8 lawsuit seeking declaratory relief regarding trademark infringement and cyberpiracy. As a result,  
9 the TTAB oppositions have been suspended pending the disposition of this lawsuit, and  
10 Nextdoor.com has avoided facing a determination that it committed fraud. *Id.* Thus, far from  
11 being in court because Mr. Abhyanker is "harassing" Nextdoor.com as Benchmark alleges, Mr.  
12 Abhyanker is back in Court as a result of the instant lawsuit, filed as a tactical maneuver by  
13 Nextdoor.com. SAAC ¶ 157.

### 14 **III. LEGAL STANDARD**

15 A Rule 12(b)(6) motion is "viewed with disfavor." *Broam v. Bogan*, 320 F.3d 1023, 1028  
16 (9th Cir. 2003). In ruling on a motion to dismiss under Rule 12, the Court takes "all allegations  
17 of material fact [in the complaint] as true and construe(s) them in the light[] most favorable to the  
18 nonmoving party." *Parks Sch. of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). The  
19 Court should deem allegations sufficient to state a cognizable claim if they present "enough facts  
20 to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
21 570 (2007). This minimal demand for "plausible grounds to infer" a claim "does not impose a  
22 probability requirement . . . [A] well-pleaded complaint may proceed even if it strikes a savvy  
23 judge that actual proof of those facts is improbable." *Id.* at 556 (footnote omitted).

24 The issue in a motion to dismiss is not whether a plaintiff will ultimately prevail, but  
25 whether the plaintiff is entitled to offer evidence to support the claims in the complaint. *Solis v.*  
26 *Webb*, C-12-2055 EMC, 2012 U.S. Dist. LEXIS 138516, at \*14 (N.D. Cal. Sept. 26, 2012.) The  
27 moving party therefore, has the heavy burden of showing that the non-moving party has not met  
28 the minimal pleading requirements of FRCP 8(a). *Maximo v. San Francisco Unified School*

District, No. C 10-35533 JL, 2011 U.S. Dist. LEXIS 30225, at \*11–12 (N.D. Cal. Mar. 21, 2011).

#### IV. ARGUMENT

##### A. Benchmark was obligated to guard the secrecy of Mr. Abhyanker's confidential information.

Benchmark first attempts to avoid liability by arguing that it cannot be bound by its promise to keep Mr. Abhyanker's pitch materials confidential. MTD at 10-13. That argument fails as a matter of law.

Misappropriation is defined as the disclosure or use of a trade secret of another without express or implied consent by a person who, at the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use. Cal Civ Code 3426.1. Allegations of misappropriation are properly based on oral agreements to maintain secrecy. *See, e.g., Speech Tech. Associates v. Adaptive Communication Sys., Inc.*, 1994 WL 449032, No. C–88–2392, \*9 (Aug. 16, 1994, ND Cal); *Wolf Designs United States District Court*, 322 F.Supp.2d 1065 (C.D. Cal. 2004). The cases that Benchmark cites do not undermine that fact. Benchmark cites *Siam Numhong Prods. Co., Ltd. v. Eastimpex*, 866 F. Supp. 445, 450 (N.D. Cal. 1994) (MTD at 11), which states, “Thus, the statute of frauds defense may be asserted only against a wrongful allegation that one is a party to a contract, not simply to prevent enforcement of an agreement that happened to be oral.” *Siam* therefore supports Mr. Abhyanker's assertion that the oral contract must be enforced.

The remainder of the cases that Benchmark cites simply hold that the owner of trade secrets must take reasonable steps to guard the secrecy of its trade secrets, but they do not hold that oral agreements are insufficient. MTD at 11 (citing *MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 521 (9th Cir. 1993) (holding that a customer database qualifies as a trade secret in part because the plaintiff took reasonable steps to insure the secrecy to the information); *Whyte v. Schlage Lock Co.*, 125 Cal. Rptr. 2d 277, 286–87 (2002) (reiterating that “the test for trade secrets is whether the matter sought to be protected is information (1) which is valuable because it is unknown to others and (2) which the owner has attempted to keep secret); *Religious Tech. Ctr. v.*

1 *Netcom On-Line Commc'n Servs., Inc.*, 923 F. Supp. 1231, 1253–54 (N.D. Cal. 1995) (finding  
2 that the plaintiff took reasonable steps to protect its trade secrets, and noting that *reasonable*  
3 *efforts can include advising employees of the existence of a trade secret* and limiting access to the  
4 information on a “need to know basis”) (emphasis added); Cal. Civ. Code § 3426.1(d)(2) (“trade  
5 secret” is something that derives independent economic value, actual or potential, from not being  
6 generally known to the public or to other persons who can obtain economic value from its  
7 disclosure or use). Benchmark has not cited a single case in which a Court has dismissed a trade  
8 secret case because an oral confidentiality agreement was deemed to violate the statute of frauds.  
9 To the contrary, the *Religious Tech.* case holds that simply “advising” persons of the existence of  
10 trade secrets is a reasonable measure to protect trade secrets.

11 The oral agreement that underlies Mr. Abhyanker’s trade secret misappropriation claims  
12 here gave rise to Benchmark’s duty to maintain secrecy, and it is not subject to the statute of  
13 frauds.

14 **i. The oral agreement between Benchmark and Mr. Abhyanker could**  
15 **have been performed within one year**

16 First, agreements are only subject to the statute of frauds if their terms specify that the  
17 agreement cannot be performed within one year. *See, e.g., White Lightning Co. v. Wolfson*, 68  
18 Cal. 2d 336, 343 (1968) (citing *Hollywood Motion Picture Equipment Co. v. Furer* 16 Cal.2d  
19 184, 187 (1940); *Keller v. Pacific Turf Club* 192 Cal. App. 2d 189, 195-196 (1961)). If instead  
20 an agreement is capable of being performed within one year, then it is outside of the statute of  
21 frauds. *Rosenthal v. Fonda*, 862 F.2d 1398, 1401 (9th Cir. 1988) (“Only those oral contracts  
22 which “expressly preclude performance within one year” or that “cannot possibly be performed  
23 within one year” are unenforceable.) (internal quotations removed). “Accordingly, if by its terms  
24 performance of a contract is possible within one year, the contract does not fall within the statute  
25 of frauds even though it is probable that it will extend beyond one year.” *Id.* at 548–549; *see also*  
26 *Foley v. Interactive Data Corp.*, 47 Cal.3d 654,673 (1988) (“if a condition terminating a contract  
27 may occurs within one year of its making, then the contract is performable within a year and does  
28 not fall within the scope of the statute of frauds. *This is true even if the contract may extend for*

1 longer than one year if the condition does not occur.”) (emphasis added); see also *Sweet v.*  
2 *Bridge Base, Inc.*, No. CV F 08–1034, 2009 WL 1514443, \*3 (E.D. Cal. May 28, 2009). The  
3 case cited by Benchmark, *Tostevin*, does not hold differently. In *Tostevin v. Douglas*, 160 Cal.  
4 App. 2d 321, 327–28 (1958), the court noted that if the terms of a contract specify that it is not to  
5 be performed within a year, then the statute of frauds applies.

6 In *Sweet*, the plaintiff claimed she entered into an oral agreement whereby the defendant  
7 corporation agreed to pay a percent of gross revenues to investor in exchange for investor’s  
8 efforts in setting up the corporation’s online business. The alleged express agreement was an  
9 arguably an agreement of indefinite duration, but the court found it could not be said to require  
10 more than one year for its completion. The court found that the discontinuation of one of the  
11 businesses within one year, however remote that possibility may have been, would have  
12 terminated the contract, and that therefore the contract did not fall within the statute of frauds. *Id.*  
13 at \*3-4.

14 Likewise, the agreement between Benchmark and Mr. Abhyanker could have been  
15 performed within a year. If, for example, Mr. Abhyanker had developed his social networking  
16 concept and released it to the public within the year, then Benchmark would not have been under  
17 an ongoing obligation to maintain the confidentiality of the concept. As a result, the statute of  
18 frauds does not apply to Benchmark’s promise.

19 **i. Benchmark is estopped from relying on the statute of**  
20 **frauds**

21 Moreover, Benchmark cannot avoid its liability by relying on the statute of frauds because  
22 Mr. Abhyanker upheld his end of the bargain. “Under California law, the statute of frauds is to be  
23 used only for the prevention of fraud, and not to perpetrate fraud; i.e. as a shield, not as a sword.  
24 Thus, when there has been complete performance of an oral agreement by one party, there is ‘an  
25 absence of fraud or deceit implied by law.’” *Mar Partners I LLC v. Amer. Home Mort. Servicing,*  
26 *Inc.*, No. C 10–02906, 2010 WL 3184334, \*2 (Aug. 11, 2010) (quoting *Colon v. Tosetti*, 14 Cal.  
27 App. 693, 695 (1910) (internal quotation marks removed)).

28 Mr. Abhyanker developed valuable social networking concepts, and approached

1 Benchmark for funding, such that he could develop his ideas, and eventually unveil his products  
2 to the general public. Before providing details of his concepts to Benchmark, Mr. Abhyanker  
3 secured a promise that Benchmark would keep his materials confidential, so that they would  
4 retain their value, and so that they would remain Mr. Abhyanker's possession and control.  
5 Benchmark provided oral assurances of confidentiality, as was its pattern and practice. SAAC ¶  
6 121. Based on Benchmark's assurances, Mr. Abhyanker then pitched his concepts to Benchmark,  
7 and subsequently entered into discussions with Benchmark regarding funding. Given that Mr.  
8 Abhyanker performed his part of the agreement by sharing his concepts, Benchmark cannot now  
9 say that it does not have to perform its part of the deal. *See SOAP Projects, Inc. v. SCM*  
10 *Microsystems, Inc.*, 2010 WL 5069832, No. 10-CV-01773 (N.D. Cal Oct. 9, 2013) ("In  
11 California, ... the doctrine of equitable estoppel can, in appropriate circumstances, prevent a party  
12 from asserting the Statute of Frauds.") (citing *In re Eastview Estates II*, 713 F.2d 443 (9th  
13 Cir.1983) (citation omitted)). "[A] substantial change of position in reliance on an oral agreement  
14 will estop reliance on the statute of frauds." *Id.* (citing *Estate of Housley*, 56 Cal.App.4th 342,  
15 357 (1997) (quoting *Hall v. Hall*, 222 Cal.App.3d 578, 585-86 (1990)); *see also Monarco v. Lo*  
16 *Greco*, 35 Cal.2d 621, 623, 220 P.2d 737 (1950) (the doctrine of estoppel is meant "to prevent  
17 fraud that would result from refusal to enforce oral contracts in certain circumstances.")).

18 When a plaintiff establishes that: (1) a promise was made which (2) defendants should  
19 reasonably have expected would cause plaintiffs to change their position and (3) which did in fact  
20 cause plaintiffs to change their position (4) in justifiable reliance on the promise and (5) in such a  
21 manner that injustice can be avoided only by enforcing the promise. *Glacier Water Co., LLC v.*  
22 *Earl*, 2010 WL 5071258 WD Wash, Dec. 7, 2010 (citing *King v. Riveland*, 125 Wash.2d 500,  
23 506 (1994)). In *Glacier Water*, the defendant promised that it would file certain applications,  
24 which were to include the plaintiff's information. The plaintiffs therefore shared confidential  
25 business information and trade secrets with the defendants, assisted them in filing the  
26 applications, and did not oppose the applications when filed. Given the nature of the relationship  
27 between the parties at the time, the court found that plaintiffs' reliance was reasonable, and  
28 estopped the defendant from later relying on the statute of frauds.

1 Just like the *Glacier Water* case, Mr. Abhyanker shared confidential business information  
2 and trade secrets with Benchmark in reasonable reliance on Benchmark's assurances of  
3 confidentiality. Benchmark cannot excuse its misappropriation through meritless attempts to void  
4 its promise to maintain confidentiality.

5 **ii. Issues of fact regarding Benchmark's obligations should be**  
6 **resolved at trial**

7 Benchmark also attempts to evade liability by implausibly insinuating that it never  
8 promised to keep Mr. Abhyanker's information confidential, and by attempting to manufacture  
9 nonexistent inconsistencies in Mr. Abhyanker's allegations. Benchmark has absolutely no basis  
10 for those assertions, and indeed Benchmark's arguments are not supported by declarations or by  
11 any other concrete evidence. Rather, they are based on conjecture and attorney argument. To the  
12 extent there are factual issues regarding the boundaries of Benchmark's promise, those issues are  
13 more properly resolved at trial, not at the pleading stage. In a motion to dismiss, all facts in  
14 complaint must be taken as true, and all inferences drawn in favor of non-moving party.  
15 Therefore, Benchmark's unfounded conjectures must be rejected. *See Parks Sch. of Bus.*, 51 F.3d  
16 at 1484 (In ruling on a motion to dismiss under Rule 12, the Court takes "all allegations of  
17 material fact [in the complaint] as true and construe(s) them in the light[] most favorable to the  
18 nonmoving party." ).

19 Benchmark argues, without factual or evidentiary support, that "the alleged 'promise'  
20 implausible on its face." MTD at 12. There is nothing implausible about a venture capital firm  
21 promising to keep pre-launch business information confidential, particularly when it is  
22 considering investing in the business. To the contrary, what is implausible is that any venture  
23 capital firm with a potential financial interest in a pitched concept would fail to see the  
24 importance of safeguarding pre-launch information. Similarly, it is implausible that any  
25 entrepreneur would have provided a venture capital firm with confidential information, including  
26 trade secrets, without first extracting a promise of confidentiality. The SAAC explains that Mr.  
27 Abhyanker did just that. SAAC ¶¶ 121-122. In particular, Mr. Abhyanker did not share any  
28 confidential information with Benchmark until Benchmark promised to "maintain confidential

1 any and all information disclosed by Abhyanker during any future meetings.” *Id.* ¶ 121. Given  
2 that it is the pattern and practice of Benchmark, its general partners, and EIRs to agree to non-  
3 disclosure agreements via verbal promises and handshakes, Mr. Abhyanker felt comfortable with  
4 Benchmark’s blanket verbal NDA. *Id.*

5 Benchmark argues that because Mr. Abhyanker is an attorney by training, he should have  
6 forced Benchmark to document its promise in writing. MTD at 12. The SAAC explains that it is  
7 Benchmark’s normal pattern to issue only verbal assurances, and Mr. Abhyanker acquiesced to  
8 that practice in the interest of forming a relationship. *See* SAAC ¶¶ 121-122. Regardless, a  
9 motion to dismiss is not the proper place for Benchmark to question Mr. Abhyanker’s  
10 sophistication or legal experience. Benchmark does not provide any evidence to contradict the  
11 statements in the SAAC, or provide the Court with any reason to take the extraordinary step of  
12 construing those allegations against Mr. Abhyanker.

13 Benchmark also alleges that its NDA is invalid because some of the information that Mr.  
14 Abhyanker supplied to Benchmark was public. MTD at 12. Whether or not some of the  
15 information discussed between Mr. Abhyanker and Benchmark was publicly known, is neither  
16 here nor there. The fact remains that Benchmark’s blanket NDA obligated it to safeguard Mr.  
17 Abhyanker’s trade secrets. Benchmark does not identify with any particularity what information  
18 was supposedly public, and, as discussed below, Mr. Abhyanker took reasonable steps to  
19 maintain the secrecy of his trade secrets. Nevertheless, if some discussions between the parties  
20 involved publicly available information, there is no basis for asserting that such a discussion  
21 would invalidate the NDA.

22 Finally, Benchmark attempts to manufacture an inconsistency in Mr. Abhyanker’s  
23 pleadings by stating that he alleged in one document that in two different phone calls,  
24 Benchmark’s general partner Kevin Harvey separately gave oral assurances of confidentiality to  
25 Abhyanker and Fatdoor investor Jeffrey Drazan, and in another document stated that there was  
26 one phone call between himself and Harvey. MTD at 12. Benchmark’s argument  
27 mischaracterizes the statements in Mr. Abhyanker’s pleadings. In the first pleading, Mr.  
28 Abhyanker stated that Mr. Harvey gave assurances of confidentiality to Mr. Drazan as well as to



1 Mr. Abhyanker. The SAAC then states, “In a follow-up telephone call Harvey, a general partner  
2 of Benchmark capital, agreed to maintain confidential any and all information disclosed by  
3 Abhyanker during any future meetings.” SAAC ¶ 122. Nowhere does the SAAC state that the  
4 call between Mr. Harvey and Mr. Abhyanker consisted of Benchmark’s *only* assurance of  
5 confidentiality. Accordingly, the supposed inconsistency is entirely manufactured by  
6 Benchmark.<sup>1</sup> The fact is that Benchmark made multiple promises of confidentiality, and it should  
7 be held liable for breaching those promises.

8 **B. Mr. Abhyanker pled the communication of actionable trade**  
9 **secrets to Benchmark**

10 Benchmark next argues that Mr. Abhyanker has not pled that he communicated any  
11 actionable trade secrets to Benchmark. That argument is misguided, as it attempts to require Mr.  
12 Abhyanker to prove the merits of his claim at the pleading stage. To state a cause of action for  
13 misappropriation of trade secrets under the Uniform Trade Secrets Act, plaintiff must only plead  
14 two primary elements: (1) the existence of a trade secret, and (2) misappropriation of the trade  
15 secret. *AccuImage Diagnostics Corp v. Terarecon, Inc.*, 260 F. Supp. 2d 941, 950 (N.D. Cal.  
16 2003) (citing Cal. Civ.Code § 3426.1(b)). Mr. Abhyanker has done both, yet Benchmark’s  
17 motion improperly argues that Mr. Abhyanker prove the merits of his trade secret  
18 misappropriation at the pleading stage. Such a showing is not required.<sup>2</sup>

19 **i. Mr. Abhyanker identified his trade secrets with sufficient**  
20 **particularity**

21 In order to plead the existence of a trade secret, a plaintiff “need not plead with specificity  
22 what particular proprietary information was misappropriated[.]” *DocMagic, Inc. v. Ellie Mae,*  
23 *Inc.*, 745 F. Supp. 2d 1119, 1145 (N.D. Cal. 2010) (citing *Twombly*, 550 U.S. at 570, 127 S.Ct.  
24 1955; *StonCor Grp., Inc. v. Campton*, No. C05–1225JLR, 2006 WL 314336, at \*5 (W.D. Wash.

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25 <sup>1</sup> Benchmark acknowledges that there is an oral contract between itself and Fatdoor, but argues  
26 that the existence of that contract undercuts Mr. Abhyanker’s standing to sue in his personal  
27 capacity. MTD at 12. The fact that Fatdoor may also have standing to sue does not undermine  
28 Mr. Abhyanker’s standing. Moreover, Fatdoor has assigned its intellectual property and trade  
secrets to Mr. Abhyanker. See Declaration of Raj Abhyanker ISO Opposition to Nextdoor.com’s  
Motion For Summary Judgment (filed concurrently herewith) at ¶¶ 42-51.

<sup>2</sup> As to the misappropriation prong, Benchmark argues only that it cannot be held to its oral  
promise. As discussed above, that argument fails.

1 Feb. 7, 2006) (finding alleged misappropriation of “proprietary and confidential information  
2 concerning ... sales and marketing strategies, pricing and pricing policies, and customer lists and  
3 installers” sufficient to state a claim); *TMX Funding, Inc. v. Impero Technologies, Inc.*, No. C-10-  
4 00202, 2010 U.S. Dist. LEXIS 60260, \*8-9 (N.D. Cal. June 17, 2010) (Finding that a plaintiff  
5 does not need to spell out the details of its trade secret in its complaint to avoid dismissal.)  
6 Instead, a plaintiff must simply put the defendant on notice as to its wrongdoing. *Burroughs*  
7 *Payment Sys. Inc. v. Symco Group, Inc.*, No. C-11-06268, 2012 WL 1670163 (N.D. Cal. May 14,  
8 2012).

9 In *Burroughs*, the plaintiff argued on information and belief that the defendant had  
10 misappropriated trade secrets that resided on the plaintiff’s computers. The defendant argued that  
11 the trade secret misappropriation claim was not adequately pled because the plaintiff did not  
12 specify which aspects of its computer programs were trade secrets. The Court rejected the  
13 defendant’s arguments and held that the allegations were sufficient to put the defendant on notice  
14 as to the allege wrongdoing.

15 Similarly, in *TMX*, this Court found the following descriptions of trade secrets to be  
16 sufficient for a pleading: software, source code, data formulas, business methods and marketing  
17 plans, product information for cost, pricing, and margin data, customer lists, contact names for  
18 accounts, customer profiles, login and password information. *Id.* Likewise, in *KnowledgePlex*,  
19 this Court found the following description sufficient: “the code required to operate DataPlace and  
20 all of the design and development work of the project to create the code are protectable trade  
21 secrets.” *KnowledgePlex, Inc. v. PlaceBase, Inc.*, No. C-08-4267, 2008 U.S. Dist. LEXIS 103915,  
22 \*24 (N.D. Cal. Dec. 17, 2008). In *Premiere Innovations*, the Court found the following  
23 description sufficient: “the Products’ design, manufacture, pricing, and market opportunity.”  
24 *Premiere Innovations, Inc. v. Iwas Industries, LLC*, No. 07-cv-1083, 2007 U.S. Dist. LEXIS, \*10  
25 (S.D. Cal. Sept. 28, 2007). And in *GiveMePower*, the Court found the following identification  
26 sufficiently particular: “Plaintiff’s proprietary database of existing and prospective field  
27 technicians and business affiliates, Plaintiff’s confidential contractor agreements, as well as  
28 confidential business plans and processes developed by Plaintiff for the BAM Project.”

1 *GiveMePower Corp. v. Pace Compumetrics, Inc.*, No. 07-cv-157, 2007 U.S. Dist. LEXIS 59371,  
2 \*27-28 (S.D. Cal. Aug. 14, 2007).

3 By contrast, a disclosure is insufficient if it alleges only the misappropriation of a “secret  
4 process” and provides no additional details from which the court, or the defendant, could  
5 determine what “secret process” was alleged to have been misappropriated. *Burroughs*, 2012 WL  
6 1670163 at \*14. Thus, a plaintiff has to allege more than the fact that a secret was  
7 misappropriated, but high-level categorical identifications of trade secrets are sufficient to put a  
8 defendant on notice as to its wrong-doing.

9 Here, Mr. Abhyanker has done more than provide high level, categorical descriptions of his  
10 trade secrets. The allegations in the SAAC are therefore more than enough to put Benchmark on  
11 notice as to its wrongdoing. Moreover, Benchmark has the benefit of Mr. Abhyanker’s Second  
12 Amended Designation of Trade Secrets, to which it refers in its motion to dismiss, for additional  
13 details as to Benchmark’s wrongdoing.

14 With respect to the Lorelei neighborhood trade secret, the SAAC states that Mr.  
15 Abhyanker’s trade secrets include the identification of inventors in the Lorelei neighborhood and  
16 the activation of the Lorelei neighborhood as a prime testing neighborhood for Mr. Abhyanker’s  
17 social networking concept. SAAC ¶100. The SAAC further details the efforts that Mr.  
18 Abhyanker undertook in order to identify the Lorelei neighborhood as a neighborhood for  
19 prototyping his neighborhood social network, and it explains his efforts to walk through the  
20 neighborhood and popularize his concept with the residents. SAAC ¶¶ 101-103. The Second  
21 Amended Designation of Trade Secrets (“SADTC”) (D.E. 135) explains that the fact that the  
22 Lorelei neighborhood is the ideal first neighborhood to use to test and launch a neighborhood  
23 social network is a trade secret. SADTC at 2. Based on that information, Benchmark is on notice  
24 that it wrongly disclosed the fact that the Lorelei neighborhood is the ideal first neighborhood to  
25 use to test and launch a neighborhood social network.

26 The SAAC also identifies the bidding history of the Nextdoor.com domain as a trade secret.  
27 SAAC ¶100. The SAAC further explains that Mr. Abhyanker had placed numerous bids for the  
28 Nextdoor.com domain, but was unable to secure the domain, given that his bidding history was

1 misappropriated and disclosed to Nextdoor.com, who then successfully purchased the domain.  
2 SAAC ¶133; *see also* SAAC ¶¶152-153. The SADTC likewise identifies the bidding history for  
3 the Nextdoor.com domain as a trade secret. SADTC at 2. Thus, Benchmark is on notice that it  
4 wrongly disclosed Mr. Abhyanker's bidding history to Nextdoor.com.

5 Benchmark claims on one hand that it does not understand what a "bidding history" is  
6 (MTD at 3) and on the other hand states that a bidding history cannot be a trade secret since the  
7 general public knows what it is and how to bid on domain names (MTD at 14-15). Despite  
8 Benchmark's contradictory arguments, it is clear that Mr. Abhyanker's pleading has put  
9 Benchmark on notice as to its wrongdoing, and that Mr. Abhyanker's identification is at least as  
10 specific as the identifications found sufficient in the cases discussed above.

11 **ii. The trade secrets at issue are valid trade secrets, though**  
12 **Mr. Abhyanker is not required to prove his case on the**  
13 **merits at the pleading stage**

14 As described above, Mr. Abhyanker satisfied the pleading requirements. At the pleading  
15 stage, the party alleging misappropriation of trade secrets is only required to put the defendant on  
16 notice as to the allegation of wrongdoing. *Burroughs*, WL 1670163 at \*4, \*15-16.

17 Nevertheless, Benchmark's motion argues that Mr. Abhyanker should go beyond that  
18 requirement, and prove the merits of his case. In particular, Benchmark argues that Mr. Abhyanker  
19 is required to prove that his trade secrets were not widely known at the time, and that they had  
20 independent economic value. MTD at 14-16.

21 In *DocMagic*, defendant argued at the pleading stage that the trade secret misappropriation  
22 claim should be dismissed because the trade secrets were known to others. *DocMagic*, 745 F.  
23 Supp. 2d at 1145. In particular, the defendant argued that it had independent access to the alleged  
24 trade secrets, and that the allegations of misappropriation were therefore implausible. The court  
25 rejected the defendant's argument, and noted that the plaintiff had invested expense and effort  
26 into compiling the information into a specific form. The court therefore held that it was too early  
27 in the case to determine whether the defendant compiled the information at issue independently,  
28 rather than misappropriating it. *Id.*

The same principle applies here. Mr. Abhyanker explained that he undertook

1 considerable efforts to identify the Lorelei neighborhood as a prime neighborhood in which to  
2 prototype a social networking concept (SAAC ¶¶ 101-102), and that he undertook considerable  
3 effort to bid for the Nextdoor.com domain names (SAAC ¶¶ 133, 152). As discussed below, Mr.  
4 Abhyanker has satisfied the pleading standard and should not be required to prove the merits of  
5 his case.<sup>3</sup>

6 **1. The identified trade secrets were not publicly known**

7 Absolute secrecy is not required to maintain a trade secret. *California Int'l Chemical Co.*  
8 *v. Sister H. Corp.*, 1999 U.S. App. LEXIS 868, \*13 (9th Cir. Jan. 19, 1999). Only relative  
9 secrecy is required, and it is sufficient that the trademark owner engage in reasonable efforts to  
10 preserve secrecy and that the trade secret is not generally known within the industry. *Id.*; *K-2 Ski*  
11 *Co. v. Head Ski Co., Inc.*, 506 F.2d 471, 474 (9th Cir. 1974); *Gable-Leigh, Inc. v. North American*  
12 *Miss*, No. 01-01019, 2001 U.S. Dist. LEXIS 25614, \*60 (9th Cir. April 16, 2001); Milgrim, Trade  
13 Secrets, § 2.07. It is enough that the trade secret owner “made it difficult” for competitors to  
14 acquire the trade secret by proper means. *Gable-Leigh*, 2001 U.S. Dist. LEXIS 25614 at\*60  
15 (citing *Trandes Corp. v. Guy F. Atkinson Co.*, 996 F.2d 655, 664 (4th Cir. 1993)). Moreover,  
16 whether the trade secret owner’s efforts to maintain secrecy were reasonable is a question of fact,  
17 and “the trier of fact must consider the entirety of circumstances surrounding use of the secret.”  
18 *K-2 Ski*, 506 F.2d at 474. Therefore, even limited public disclosures may not destroy the trade  
19 secret when the disclosure does not result in the secret becoming generally known to those who  
20 can derive economic value from it. *See e.g.*, *K-2 Ski*, 506 F.2d at 474 (public tours of the K-2  
21 plant showing ski manufacturing operation did not destroy secrecy); *Gable-Leigh*, 2001 U.S. Dist.  
22 LEXIS 25614 at\*58 (disclosure to employees did not destroy secrecy).

23 **a. Mr. Abhyanker took reasonable steps to preserve the**  
24 **secrecy of the his Lorelei Neighborhood trade secret**

25 Mr. Abhyanker secured a verbal NDA from Benchmark before disclosing his trade secrets  
26 and other confidential information. Similarly, Mr. Abhyanker required Counterdefendants  
27 Sandeep Sood and Big Circle Media to execute an Independent Contractor Agreement and Non-

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28 <sup>3</sup> Mr. Abhyanker also refers the Court to his Opposition to Nextdoor.com’s Motion for Summary Judgment, being  
filed concurrently herewith, in which he presents evidence supporting his trade secret misappropriation claims.

1 Disclosure Agreement before disclosing his concepts and Trade Secrets, including details about  
2 his selection of the Lorelei neighborhood. SAAC ¶ 100. Those agreements required Sood and  
3 Big Circle to keep the LegalForce.com and Nextdoor.com concepts and all accompanying details  
4 and work product relating to it confidential. *Id.* Mr. Abhyanker therefore took reasonable steps to  
5 preserve the secrecy of his bidding history trade secret.

6 Benchmark alleges that the fact of Mr. Abhyanker's prototyping destroyed Mr.  
7 Abhyanker's trade secret. MTD at 16. Benchmark's argument is misguided. The fact that the  
8 Lorelei residents were exposed to Mr. Abhyanker's social networking concept has no bearing on  
9 whether or not they were aware of the process by which their neighborhood was selected, or of  
10 the special attributes that resulted in it being selected. In fact, the residents were not exposed to  
11 those details. Rather, as stated in the SAAC Mr. Abhyanker simply popularized his concepts in  
12 the neighborhood. SAAC ¶ 104. Moreover, the disclosure of the Lorelei Trade Secret to  
13 Benchmark was made on a CD that was clearly marked confidential and provided subject to oral  
14 assurances of confidentiality by Benchmark. Accordingly, Mr. Abhyanker clearly undertook  
15 reasonable efforts to maintain the secrecy of his Lorelei Trade Secret, such that his claims should  
16 proceed to discovery.

17 **b. Mr. Abhyanker took reasonable steps to preserve the**  
18 **secrecy of the his bidding history trade secret**

19 As set forth in above, absolute secrecy is not required. *K-2 Ski*, 506 F.2d at 474. A trade  
20 secret owner is only required to take reasonable efforts to maintain the secrecy of his trade secret.  
21 *Id.* And whether the efforts taken were reasonable has been held to be a question of fact for the  
22 trier of fact. *Id.*

23 Benchmark alleges that the bidding history for the Nextdoor.com website is not a trade  
24 secret because the methods for submitting bids are transparent and readily accessible on  
25 numerous registration sites online. MTD at 15. Again, Benchmark's argument is misguided.  
26 The fact that the public knows how to bid on domain names in general is irrelevant to Mr.  
27 Abhyanker's particular bidding history for the Nextdoor.com domain. Mr. Abhyanker's  
28 particular bidding history for the Nextdoor.com domain was not made public in any manner—it

1 could not be found in any public materials or from any public source. The bidding recipients may  
2 have known portions of Mr. Abhyanker's bidding history, but that fact does not magically  
3 transform that bidding history into something that is generally known by the public or others in  
4 the industry. The knowledge of Mr. Abhyanker's bids in particular, allowed Nextdoor.com to  
5 gain a competitive advantage, and secure the domain that Mr. Abhyanker had been unsuccessful  
6 in securing. SAAC ¶¶133, 152-153. Accordingly, Benchmark fails to provide any reason why  
7 the Court should disregard the allegations in Mr. Abhyanker's pleadings and SADTC at this early  
8 stage of the litigation.

## 9 **2. The identified trade secrets have independent economic value**

10 The requirement that a trade secret derive independent economic value from not being  
11 generally known "has been interpreted to mean that the secrecy of this information provides a  
12 business with a substantial business advantage." *Allergan, Inc. v. Merz Pharmaceuticals, LLC*,  
13 No. 11-446, 2012 U.S. Dist. LEXIS 31981, \*30 (C.D. Cal. Mar. 9, 2012). Therefore, if the  
14 disclosure of the trade secret to a competitor would allow the competitor to more selectively and  
15 more effectively compete with the trade secret owner, then the trade secret does derive  
16 independent economic value from not being generally known. *Id.* ("[D]isclosure would allow a  
17 competitor to direct its sales efforts to those customers who have already shown a willingness to  
18 use a unique type of service or product."); *Brocade*, 873 F. Supp.2d at 1214 (trade secret derived  
19 economic value by allowing a competitor to develop a product that meets the needs of  
20 customers).

### 21 **a. The Lorelei neighborhood trade secret has independent economic value**

22 In the instant case, there is no question that Mr. Abhyanker's Lorelei Trade Secret had  
23 independent economic value because it allowed Nextdoor.com to exponentially expedite the time  
24 necessary to prove the viability of its business model to its investor Benchmark. SAAC ¶ 148. It  
25 is trade secret owner's expenditure of significant time, resources, and efforts to compile the trade  
26 secret, coupled with the unfair advantage it provides a "competitor to solicit both more selectively  
27 and more effectively without having to expend the effort." *Pyro Spectaculars North, Inc. v.*  
28

1 *Souza*, 861 F. Supp.2d 1079, 1088-89 (E.D. Cal. 2012) (noting the “comprehensive, if not  
2 encyclopedic, compilation of customer” information).

3 Mr. Abhyanker undertook considerable efforts to identify the Lorelei neighborhood  
4 through geocoding. And after identifying and selecting the Lorelei neighborhood, Mr. Abhyanker  
5 and Fatdoor engaged in even further efforts to transform the Lorelei neighborhood into the ideal  
6 neighborhood to test neighborhood social network over a period of four to six months. Mr.  
7 Abhyanker went door-to-door engaging in manual efforts to establish connections between  
8 residents, engaging in extensive handholding to overcome any initial lack of interest among  
9 residents. At the time of the misappropriation, Nextdoor.com was a startup in distress. SAAC ¶¶  
10 99, 143, 183. It had finally come to terms with the failure of its original Fanbase concept. *Id.*  
11 Against that backdrop, Nextdoor.com suddenly decided to redirect its business into the  
12 neighborhood social networking space in order to retain its investment from Benchmark. *Id.* By  
13 using Mr. Abhyanker’s Lorelei trade secret, Nextdoor.com was able to prototype its business in a  
14 neighborhood where it could achieve fast penetration due to the prior effort of Mr. Abhyanker  
15 and Fatdoor. *See id.* ¶ 148. Mr. Abhyanker’s trade secret was not simply the fact that the Lorelei  
16 neighborhood existed or even that he was testing his network in the neighborhood, but it was the  
17 fact that it was specially selected and transformed into the ideal neighborhood. Mr. Abhyanker’s  
18 trade secret was not simply the fact that the Lorelei neighborhood existed or even that he was  
19 testing his network in the neighborhood, but it was the fact that it was specially selected and  
20 transformed into the ideal neighborhood.

21 **b. The bidding history trade secret has independent**  
22 **economic value**

23 As discussed in above, a trade secret possesses independent economic value if it allows a  
24 competitor to gain an unfair advantage and more effectively compete with the trade secret owner.  
25 *Allergan*, 2012 U.S. Dist. LEXIS 31981, at \*30.

26 In the instant case, Mr. Abhyanker’s Bidding History Trade Secret clearly had  
27 independent economic value. By knowing how much Mr. Abhyanker and Fatdoor had been  
28 willing to pay for the nextdoor.com domain name, Benchmark Capital and Nextdoor.com were



1 able to value the domain name and then outbid Mr. Abhyanker and purchase the nextdoor.com  
2 domain name. Clearly, Nextdoor.com obtained the domain name itself, which allowed it to more  
3 efficiently compete against Mr. Abhyanker.

4 **C. Mr. Abhyanker satisfied the pleading requirements as set forth**  
5 **in *Iqbal* and *Twombly***

6 The Court has already found Mr. Abhyanker's pleading to be sufficient with respect to his  
7 trade secret misappropriation claims. In particular, the Court has already denied motions to  
8 dismiss Mr. Abhyanker's trade secret misappropriation claims brought by Nextdoor, Prakash  
9 Janakiraman, and Sandeep Sood. (D.E. 100.) In addition, the Court allowed Mr. Abhyanker  
10 leave to file his SAAC, which includes the present trade secret misappropriation claims, which  
11 are a subset of the claims that survived the prior motions to dismiss. (*See* D.E. 100.)  
12 Accordingly, there can be no doubt that the trade secret misappropriation claims should be  
13 allowed to proceed to discovery.

14 In *Iqbal* and *Twombly*, the Supreme Court reiterated that in order to survive a motion to  
15 dismiss, the allegations do not need to be probable. *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
16 544, 556 (2007). "And, of course, a well-pleaded complaint may proceed even if it strikes a  
17 savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and  
18 unlikely." *Id.* (internal citation omitted). Even after *Iqbal* and *Twombly*, "[m]otions alleging that  
19 a plaintiff has failed to state a claim are disfavored and rarely granted." *Maximo*, 2011 U.S. Dist.  
20 LEXIS 30225, at \*11-12 (internal quotations omitted). Moreover, in misappropriation cases, the  
21 facts and knowledge of the wrongdoing are almost always in the exclusive possession of the  
22 defendant. *Brocade Communications Systems, Inc. v. A10 Networks, Inc.*, No. 10-CV-03428,  
23 2011 U.S. Dist. LEXIS 30227, \*19-20 (N.D. Cal. Mar. 23, 2011) (denying motion to dismiss  
24 trade secret misappropriation claim due to allegations made on information and belief because  
25 "pleading in this manner is acceptable for information that is not presumptively in the knowledge  
26 of the pleading party"). A liberal pleading standard should be applied to misappropriation claims,  
27 otherwise, defendants would be able to get away with trade secret misappropriation simply by  
28 keeping their wrongful conduct to themselves. *See id*; *see also KnowledgePlex, Inc.*, 2008 U.S.

1 Dist. LEXIS 103915 at\*25-26 (“Given that Plaintiff has not yet had the benefit of discovery, and  
2 in light of the liberal pleading standard of Rule 8(a), the Court concludes that Plaintiff adequately  
3 has alleged misappropriation of a trade secret.”)

4 This case is no different — only Benchmark knows with certainty which of Mr.  
5 Abhyanker’s confidential materials it wrongly disclosed to the founders of Nextdoor.com. As a  
6 result, it would be unrealistic for Mr. Abhyanker to prove the merits of his claim, or identify the  
7 particulars of the “who, what, when and where” of the claims, without the opportunity to proceed  
8 to discovery. Nevertheless, the SAAC sets forth sufficient facts to raise a reasonable expectation  
9 that discovery will reveal evidence of misappropriation.

10 As described above, the SAAC explains the efforts that Mr. Abhyanker undertook to  
11 identify the Lorelei neighborhood as a prime neighborhood in which to prototype his social  
12 networking concept, describes his efforts to transform Lorelei into the ideal neighborhood to test  
13 neighborhood social network by going door to door to establish connections between residents  
14 and to overcome any initial lack of interest among residents, and it describes his efforts to secure  
15 the nextdoor.com domain name.

16 Benchmark is incorrect in alleging that Mr. Abhyanker’s pleading is based on no more  
17 than access. To the contrary, the SAAC explains that when a Benchmark-funded company was  
18 struggling, it: (1) suddenly decided to enter the neighborhood social networking space and  
19 develop a social networking concept that was nearly identical to Mr. Abhyanker’s concept; (2)  
20 chose the *exact* name that Mr. Abhyanker had chosen for his social networking concept; (3) chose  
21 to prototype the concept in the *exact* neighborhood in which Mr. Abhyanker had prototyped and  
22 popularized his concept; and (4) obtained the *exact* domain name that Mr. Abhyanker had  
23 targeted for his social netowrking concept. It did so after having received confidential  
24 information from Mr. Abhyanker, which effectively provided a roadmap for Nextdoor.com’s  
25 success. The information contained in that roadmap had been previously disclosed to Benchmark  
26 pursuant to a confidentiality agreement. Accordingly, it is more than just a coincidence that when  
27 a company Benchmark had funded was struggling, Benchmark was able to salvage its investment  
28 by following Mr. Abhyanker’s roadmap to success.

1 Benchmark again attempts to manufacture confusion and inconsistencies by arguing that it  
2 makes no sense that Mr. Abhyanker would have revealed confidential information relating to both  
3 Fatdoor and the LegalForce and Nextdoor concepts. MTD at 18. Benchmark's argument is  
4 entirely unrelated to whether or not the SAAC satisfies the pleading standards for trade secret  
5 misappropriation claim. Regardless, Benchmark Mr. Abhyanker did not pitch one business and  
6 then proved an entire diligence file about another business as Benchmark alleges. MTD at 18.  
7 The SAAC plainly states that while the Fatdoor concept was under development, Mr. Abhyanker  
8 incorporated some of his LegalForce and Nextdoor Trade Secrets into Fatdoor, in order to make  
9 improvements, and evolve his concept from a wiki type concept to a secure neighborhood social  
10 networking concept. The SAAC also states that he pitched the developing Fatdoor concept,  
11 which included LegalForce and Nextdoor trade secrets, to Benchmark. During the pitch, he  
12 provide Benchmark with confidential information, including information about the desired name  
13 for his company and the accompanying domain name he was trying to obtain, and his successful  
14 prototypes of his concept.

15 There is no inconsistency of lack of common sense in those facts. The simple facts are that  
16 Mr. Abhyanker revealed confidential information to Benchmark — including the trade secrets at  
17 issue —and Benchmark misappropriated those trade secrets when it needed to save a floundering  
18 business. Benchmark's misappropriation prevented Mr. Abhyanker from pursuing his concepts  
19 after the original Fatdoor was taking his concepts in a different direction, and Benchmark should  
20 not be permitted to evade liability for its wrongdoing by attempting to create confusion where  
21 there is none.

22 Finally, Benchmark alleges that Mr. Abhyanker's claims are implausible, or lack common  
23 sense, because Benchmark lacked a motive to misappropriate his trade secrets. MTD at 3; *see*  
24 *also* MTD at 18-19. To the contrary, Benchmark and its EIRs had an urgent need to start a new  
25 concept out of thin air, and they needed that concept to prosper. They were able to achieve that  
26 success only by using information that they had obtained from Mr. Abhyanker, and have  
27 previously determined to have value. Thus, far from being implausible, Mr. Abhyanker's trade  
28 secret claims are likely to succeed on the merits.

1     **V.     CONCLUSION**

2             For all the foregoing reasons, Mr. Abhyanker respectfully requests that the Court deny  
3     Benchmark's Motion to Dismiss, and allow Mr. Abhyanker's claims to proceed to discovery.  
4

5     Dated: January 23, 2014

Respectfully submitted,

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